IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 361 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE N.G.NANDI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMAR POLYESTERS LIMITED

Versus

PARIJAT POLYESTERS PVT.LTD.

Appearance:

COMPANY PETITION No. 361 of 1999

MR ASHOK L SHAH for Petitioner No. 1

MR MJ SHELAT for MR GM JOSHI for Respondent No. 1

CORAM : MR.JUSTICE N.G.NANDI

Date of decision: 06/09/2001

ORAL JUDGEMENT

In this petition filed under Section 433, 434 and

439 of the Companies Act, 1956, the petitioning creditor prays for winding up of the respondent-company as the respondent-company is unable to pay its debts.

2 Pursuant to the notice issued to the respondent, the respondent-company filed appearance through counsel but failed to file reply to the petition. Vide order dated 20.7.2001, the petition was admitted and the notice of hearing was ordered to be advertised in two newspapers, namely, Indian Express and Samabhav, Ahmedabad Edition. The petitioner has filed the affidavit affirmed on 23.8.2001 of one Bankim A Trivedi testifying that the advertisements of the petition were published in The Indian Express and Samabhav newspapers on 26th July 2001. Along with the said affidavit copies of newspaper cuttings are also produced. It is suggested that the petition has been duly published in the newspapers with the date of hearing.

3 It is the say of the petitioning creditor, which is an unsecured creditor, that for the last quite some time the respondent-company was irregular in paying up its dues to its creditors including the petitioner. The total of the debit side of the company's account at the end of the year 1996-97 amounted to Rs.18,02,98,084 against which the amount of Rs.15,54,50,157 was paid leaving unpaid balance of Rs.2,48,47,927. It is further stated that the respondent-company is also liable to pay the interest at the rate of 30% on the amount dues. That on the date of the petition, a total of Rs.2,39,16,774 inclusive of interest is due and payable by the respondent-company to the petitioner comprising of Rs.1,37,02,123 as principal amount and Rs.1,02,14,651 as interest accrued.

4 That the petitioning creditor called upon the respondent-company to make the payment by addressing number of communications but of no avail and the petitioner is constrained to file the present petition as the petitioner is left with no other alternative but to pray for winding up of the respondent-company.

5 Annexure-A is the copy of the letter dated 5.2.1999 addressed by the petitioner to the respondent-company calling upon the respondent to pay Rs.1,37,02,123 being the amount due and payable by the respondent-company with interest. Annexure-D dated 5.4.1999 is the reply filed by the respondent-company to the petitioner's letter dated 5.2.1999 (Annexure-A). It has been stated therein that the respondents never disputed its liability to pay the petitioner's long

outstanding dues of Rs.1,37,02,123. It is further stated in the said reply that the moneys of the respondent-company are stuck up in its debtors. The reply also contains an assurance to the petitioner that the respondents have been making all efforts to repay the petitioner's outstanding dues, at least, the principal amount and till then the petitioner was requested to bear with the respondent. Annexure-H dated 19.4.1999 is another letter of the petitioner calling upon the respondent-company to pay the outstanding dues amounting to Rs.1,37,02,123 with interest to which the respondent-company gave reply vide Annexure-K dated 30.6.1999 regretting their inability to pay to the petitioner their outstanding dues of Rs.1,37,02,133. The said reply also contains assurance to the petitioner that all out efforts are being made to repay the dues of the petitioner at the earliest. Annexure-L dated 30th September 1999 is yet another assurance given to the petitioner made by the respondent-company to pay the outstanding dues of the petitioner.

6 Thus, as can be seen from the above, that the dues of the petitioner have been admitted by the respondent-company as suggested from the Annexures referred to hereinabove. It also appears that the respondent-company is unable to pay the dues of the petitioner and thereby discharge its liability towards the petitioner-company. The requirements envisaged under the law are fully satisfied.

7 Under the circumstances, there is no alternative but to direct the winding up of the respondent-company and the Official Liquidator appointed to take the possession of the company.

8 In view of the above, the respondent-company Parijat Polyesters Private Limited is ordered to be wound up. The Official Liquidator attached to this Court is appointed as Official Liquidator who will take the possession of all the properties of the respondent-company with all powers under the Companies Act, 1956. The petition is disposed of accordingly.

(N.G. Nandi, J.)

(mohd)